

Appearance:

MR D.A. BAMBHANIA, Asstt. Govt. Pleader for Petitioner
MR AK CLERK, Advocate, for Respondent.

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE R.BALIA.

Date of decision: 06/11/96

ORAL JUDGMENT;- (PER R. BALIA, J.)

This L.P.A. is directed against the order of the learned Single Judge dated 30-3-1994 passed in Special Civil Application No.5166 of 1987. The material facts on the basis of which the present controversy has arisen and which are not in dispute may be briefly noticed.

2. On creation of one temporary post of Telephone Operator on the establishment of the High Court of Gujarat, Ahmedabad in pay scale of Rs.130-240, the petitioner-respondent was appointed as Telephone Operator on 1-12-1973 on purely temporary basis. The post which was termed as temporary in 1973 continues to remain in existence and the appointment of the petitioner on the post continued uninterrupted.

3. It has also been accepted that though the post has been termed as temporary, work attached to the post of Telephone Operator in the establishment of the High Court is of permanent nature and the petitioner continued to hold that post uninterruptedly for which he held requisite qualification and has discharged his duties of the post satisfactorily without complaint. Since the post was isolated one and did not provide any promotional avenue the petitioner made representations for betterment of his lot. As grievance redressal measure, in the first instance, the petitioner was appointed as Section Writer on purely temporary basis in the cadre of clerks with effect from 7-7-1982. However, on his application dated 12-10-1982 for being sent to his parent post of Telephone Operator, appointment of Section Writer was cancelled as he could not be absorbed as Jr. Clerk/Section Writer at that time. However, dogged with stagnation the petitioner thereafter filed the Special Civil Application No.5166/87. During pendency of Special Civil Application the State of Gujarat had issued Resolution dated 5-7-1991 envisaging a scheme of granting higher grade in pay scale to deal with the problem of stagnation in many cadres due to absence or restricted chances of promotions or cadres having no promotional avenues by providing grant of higher scale of pay on completion of nine year cycle

known as 9-18-27 of service in the same scale without any promotion. By the another order contained in the Government Corrigendum, of Legal Department. dated 19-11-1991, the High Court of Gujarat in exercise of its power under Article 229 of the Constitution of India with the approval of the Governor of Gujarat made certain amendments in the schedule annexed to the Notification of the High Court No.1308/87 dated 3-7-1987. By the said Notification the post of Telephone Operator was ordered to be included in the cadre of Junior Clerk. It also provided that the Junior Clerk appointed as Telephone Operator shall be paid Rs.40/- per month with effect from 1-1-1991. Two fold contentions raised about applicability of the Government Corrigendum dated 19-11-1991 namely (i) that such inclusion of post of Telephone Operator in the cadre of Junior Clerk in the Notification dated 3-7-1987 had to be made effective only from 1-7-1991 and (ii) alternatively that at any rate such inclusion in the cadre by including the post of Telephone Operator amongst the cadre of Junior Clerk cannot be given retrospective effect so as to treat the inclusion of the post of Telephone Operator in the cadre of Junior Clerk from the very inception of the Rules.

4. The learned Single Judge accepted the alternative contention raised on behalf of the present appellants, respondents in the Special Civil Application. The Court noticed that in the Gujarat High Court Notification dated 27-11-1991 whereby its earlier order dated 1-7-1987 is amended whereby the post of Telephone Operator is included in the cadre of Junior Clerk. It is stipulated that the applicant appointed as Telephone Operator is paid Special Pay of Rs.40/-p.m. with effect from 1-1-1991.

5. In this back ground the Court partly allowed the petition and directed the respondents in the petition to absorb the petitioner in the cadre of Junior Clerk with effect from 3-7-1987 and to pay to the petitioner Special Pay of Rs. 40/- per month with effect from 1-1-1991. This part of the directions have been carried out and to that extent the present appellants have no grievance about it.

6. However, the limited contention raised before this Court is about the directions contained in para 42 of the judgment which is reproduced herein below:-

"Therefore, it would be just and proper to direct
the respondent to grant to the petitioner the
benefits of the Govt. Resolution dated 5th of

July 1991 on the basis that petitioner was in the cadre of Jr. Clerk from 3rd of July 1987 consistent with direction given by this Court and to give him first higher grade scale of the post of Assistant with effect from 3rd of July 1987 and the second higher grade scale of Section Officer with effect from 1st of December 1991 when he completed 18 years of service. The respondents are also directed to give all other consequential benefits to the petitioner like arrears of salary etc. as a necessary consequence of the post being included in the cadre of Jr. Clerk with effect from 3rd of July, 1987 and also necessary consequence of the direction of this Court to absorb the petitioner in the cadre of Jr. Clerk from such date."

5. The contention of the learned Advocate for the appellant is that the petitioner having been absorbed in the cadre of Jr. Clerk with effect from 3rd of July 1987 he becomes eligible for next higher grade scale of the post in the first instance on completion of nine years from that date and not earlier to that and second promotion to the post of Section Officer to be considered on completion of 18 years of service. This has been so contended on the basis that the service rendered by the petitioner on ex-cadre post prior to 3-7-1987 cannot be counted for the purpose of operating the provisions of Govt. Resolution dated 5-7-1991 on the basis of which the relief has been granted.

6. It has been contended by Mr. A.K. Clerk, learned Advocate for the respondent - petitioner that assuming that on the basis of the Resolution dated 5-7-1991 debatable question can be raised for considering this contentions, the controversy no more survives in view of later G. R. No. Pay-1194/(44)/M, 16-8-1994, relevant instruction in Clause 3(2) reads as under :-

'.....The service of isolated cadres encadred in other cadres without the request of employee and the earlier service of isolated cadre which may be encadred hereafter or cadres whose pay sale is equal but nomenclature is changed may be taken into consideration for sanctioning the Higher Grade Scale.....'

7. Having carefully considered the rival contentions and the relevant Government Resolutions on the subject brought to our Notice, there does not appear any escape from the conclusion that in the wake of Resolution dated

16-8-1994 the services rendered by the petitioner on ex-cadre post prior to its inclusion in the cadre of Jr. Clerk, has to be considered for the purpose of counting nine years service required for release of higher grade scale. In that event the petitioner - respondent becomes entitled to the promotion to the first higher grade scale from the date of absorption in the cadre post with effect from 3-7-1987. To that extent there does not remain any dispute now even as per learned Counsel for the appellant.

8. The remaining issue in this regard is about grant of benefit of second higher grade scale. The learned Single Judge has directed that the petitioner completes 18 years of service entitling him to second higher grade scale on 1-12-1991. The completion of 18 years of service takes effect on 1-12-1991, if service is to be counted as per the Govt. Applicability of Resolution, of 16-08-1994 to the present case is not disputed. However, under the resolution dated 16-8-1994 there are two conditions for grant of second higher grade scale. The employees who have completed 9 years of service in the respective cadre and the grade on 1st June, 1987 or whenever they complete 9 years of service in the grade of respective cadre after that date become eligible for first higher grade scale on 1-6-87 or thereafter when he completes 9 years of service, as the case may be. Even where one has completed more than nine years of service and fall in 18-27 cycle years of service in the same cadre on 1-6-1987 they shall be eligible only for first Higher Grade Scale. Second and third higher grade scale shall be admissible to the employees only after 1-6-87 if 18 and 27 years service in the grade of respective cadre has been completed or if the employee has completed one year after reaching the maximum stage in the respective higher/promotional grade and has stagnated, whichever is later, provided that he should not have got more than two promotions/higher grade scale to that. We may reproduce the relevant part of the said resolution hereinbelow :

"After full consideration in the matter, Government after revising this scheme ab-initio, is hereby pleased to direct that the employees who have completed 9 years of service in the respective cadre and the grade on 1st June, 1987 or when ever they complete 9 years of service in the grade of the respective cadre after this date shall be eligible for First Higher Grade Scale. Even though they have completed more than 9 years of service that means 18-27 years of service in the same cadre on 1-6-87, they shall be eligible

only for First Higher Grade Scale. Whereas the Second and Third Higher Grade Scale shall be admissible to the employee at 18 and 27 years in the grade of respective cadre after 1st June, 1987 or if the employee has completed one year after reaching the maximum stage in the respective higher/promotional grade and has stagnated, whichever is later, provided he should not have got more than two promotions/higher grade prior to that date."

9. If the present Resolution is made applicable to the petitioner, which both the learned Counsel agree that governs the petitioner, he becomes eligible for release of second higher grade scale only on completion of one year after reaching maximum stage in the first higher grade or on completion of 18 years of service in the grade by taking into consideration the services rendered in the ex-cadre post prior to inclusion of the post in cadre which ever is later. Though the petitioner has completed 18 years of service on 1-12-1991, admittedly, he has not reached maximum stage of pay-scale and question of completing one year thereafter does not arise. The parties are not in dispute in view of the fact that revision of beneficial scheme has taken place ab initio, and he will be entitled to benefit of grant of second higher grade in pay scale only as per that scheme, the petitioner - respondent shall have to wait for grant of 2nd higher grade in pay scale until aforesaid eventuality happens.

10. It may be noticed that first higher grade scale to which the petitioner is required to be placed in terms of the directions contained in the order of the learned Single Judge and in light of the Government Resolution dated 16-8-1994 shall be Rs.1640-2900 with effect 3-7-1987 as revised from time to time if any.

11. So far as the question of petitioner's entitlement to second higher grade scale is concerned, it shall be required to be considered in accordance with the Govt. Resolution dated 16-8-1994, as explained above.

12. In view of the aforesaid discussion, the directions contained in para 42 of the order of the learned Single Judge about date of release of second higher grade are modified to the extent explained above. No other question survives for consideration.

13. Implementation as to grant of first higher grade

scale if not implemented, must be implemented expeditiously. This exercise of fixation of pay in higher grade scale as well as payment of arrears should take place within a period of two months.

14. This L.P.A. is disposed off accordingly, with no order as to costs.

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